Supreme Court, U.S.
FILED
JAN 25 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-984

In the Supreme Court of the United States

OCTOBER TERM, 1987

SHELL OIL COMPANY, APPELLANT

v.

THE IOWA DEPARTMENT OF REVENUE, APPELLEE

On Appeal from the Supreme Court of Iowa

REPLY BRIEF FOR THE APPELLANT

JAMES W. HALL
Hall & Irvine
417 First Avenue S.E.
P.O. Box 2819
Cedar Rapids, Iowa 52406
(319) 366-8016

WILLIAM D. PELTZ
Shell Oil Company
900 Louisiana Street
P.O. Box 2463
Houston, Texas 77252
(713) 241-2414

KENNETH S. GELLER
Counsel of Record
MARK I. LEVY
Mayer, Brown & Platt
2000 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 463-2000
Counsel for Appellant

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF AUTHORITIES

Case:	Page
First National Bank v. *Bartow County Board of Tax Assessors*, 470 U.S. 583 (1985)	3
Constitution and statutes:	
United States Constitution:	
Commerce Clause	2, 3
Due Process Clause	2, 3
Outer Continental Shelf Lands Act, 43 U.S.C.:	
§ 1333(a)(2)(A)	3
§ 1333(a)(3)	3
31 U.S.C. § 3124(a)	3, 4

In the Supreme Court of the United States

OCTOBER TERM, 1987

No. 87-984

SHELL OIL COMPANY, APPELLANT

v.

THE IOWA DEPARTMENT OF REVENUE, APPELLEE

On Appeal from the Supreme Court of Iowa

REPLY BRIEF FOR THE APPELLANT

As our jurisdictional statement demonstrated, and as the Solicitor General agrees in his amicus brief in this case (U.S. *Iowa* Am. Br. 7), this appeal presents a substantial federal question that warrants plenary review by this Court. The Outer Continental Shelf Lands Act is an important congressional statute governing our nation's off-shore leasing program, and the interpretation of the OCSLA's state tax prohibition will affect more than 40 states and numerous corporate taxpayers. Nothing in Iowa's motion to dismiss dispels the need for this Court's review or justifies a summary ruling on the merits.[1]

---

[1] The Solicitor General also agrees (U.S. *Iowa* Am. Br. 7 n.2) that the Court should note probable jurisdiction in this case and hold the *Florida* case (No. 86-1593). See Shell *Iowa* J.S. 26-27.

I. Iowa devotes much of its discussion to a phantom issue. It repeatedly argues that "the Iowa apportioned net income [did not] exceed[] Shell's profits earned from its marketing activities in Iowa" (Mot. to Dis. 6). That proposition simply has nothing to do with the question presented in this case. If the income apportioned to Iowa did exceed Shell's profits from its activities in the State, that would establish a violation of the Due Process and Commerce Clauses, as Iowa recognizes (Mot. to Dis. 7). Instead of a constitutional claim, Shell's position here rests, as Iowa acknowledges (Mot. to Dis. 10), on "[an]other basis"—the OCSLA. That Iowa's apportionment formula in the abstract does not violate the Due Process and Commerce Clauses provides no answer to the question whether its application in these circumstances is prohibited by the OCSLA.

What is more, Iowa's apportionment methodology does, contrary to the State's assertion (Mot. to Dis. 10), "tax[] a portion of * * * [Shell's OCS] earned income." In all but one of the years reflected in the record (see J.S. 8-9 n.6), Iowa's inclusion of Shell's OCS income in the apportionable tax base increased the tax due the State. In effect, Iowa—and each of the other states that have a similar tax scheme—taxes a pro rata share of Shell's OCS income by attributing a portion of the net wellhead value of OCS oil and gas to Shell's transactions that occur in the State. While Iowa may have the constitutional power to value in-state transactions under that theory, there can be no doubt that in doing so the State has taxed Shell's OCS income. The question presented here is whether such taxation is inconsistent with the OCSLA.

With respect to that statutory question, Iowa argues (Mot. to Dis. 11) that the Court should be reluctant to disturb the State's taxing authority. But shibboleths about the states' "fundamental power" to tax (*ibid.*) are of no help in construing the OCSLA. That Congress was both aware of and intended to limit the

states' "fundamental power" is clear from the words of the legislation: "State taxation laws shall not apply to the outer Continental Shelf" (43 U.S.C. § 1333(a)(2)(A)), and the OCSLA "shall never be interpreted as a basis for [a state's] claiming any interest in * * * the property and natural resources * * * [of the OCS] or the revenues therefrom" (43 U.S.C. § 1333(a)(3)). The nature and extent of that congressional limitation on state taxation must be resolved by reference to the language, history, and policies of the OCSLA—none of which Iowa discusses.

Moreover, contrary to Iowa's pejorative characterization (Mot. to Dis. 11 nn. 11, 12), the OCSLA state tax prohibition does not create a "tax shelter" for federal lessees. As with the statute that forbids states from taxing the interest and dividend income from United States securities (31 U.S.C. § 3124(a); see J.S. 12), Congress in the OCSLA has effectively granted a federal immunity from state taxation of OCS income in order to further paramount national policies concerning the outer Continental Shelf. A congressional limitation on the taxing authority of the states, designed to promote and protect a constitutionally superior federal interest, is not to be disparaged as a windfall for the taxpayer. And in contrast to *First National Bank* v. *Bartow County Board of Tax Assessors*, 470 U.S. 583 (1985), upon which Iowa relies, Shell's interpretation of the OCSLA does not shield non-OCS income from state taxation. See 470 U.S. at 596 ("federal obligations [should not be] permitted to shelter taxable assets").

In the end, Iowa's position comes down to the argument that the OCSLA provides nothing more than the Commerce and Due Process Clauses already do: a prohibition against extraterritorial state taxation. As explained in our jurisdictional statement (at 23), that interpretation renders the statute superfluous and fails to recognize—as Congress itself understood, based on its

lengthy and frequently controversial debates over the matter—that the Act was intended to impose a significant additional restriction on the states.

Our construction of the OCSLA is not rebutted, as Iowa asserts (Mot. to Dis. 11-12), by the fact that the OCSLA does not set out detailed standards for computing the OCS income that is exempt from state taxation. Congress understandably could have left the formulation of such implementing standards to the courts (or the responsible federal agencies), just as it has done under 31 U.S.C. § 3124(a). Moreover, even if the determination of OCS income were made by the respective states, the potential for some variation in applying the statute would not be a fatal inconsistency with the OCSLA, provided that each state's methodology furthers rather than impairs the purposes of the Act. Iowa's solicitude for the federal interest in national uniformity is a flimsy—and an ironic—justification for allowing the 50 states *carte blanche* to include OCS income in the apportionable base on which their income taxes are laid.

2. Iowa and the Solicitor General have spawned much confusion concerning state taxation of income from on-Shelf sales of OCS oil and gas. Iowa contends (Mot. to Dis. 13-14, 16 n.15) that Florida's concession with respect to on-Shelf sales was " 'founded solely' " on state law and did not reflect the OCSLA. As the Florida Supreme Court explained, however, the State "concede[d] that any revenues which Shell derives from actual sales consummated on the OCS oil platforms are *beyond the reach of Florida's taxing power as limited by section 1333(a)(2) [of the OCSLA]*" (Shell *Florida* J.S. App. 1-8 (emphasis added)). In addition, the Solicitor General has recognized that Florida's concession was compelled by the OCSLA (U.S. *Florida* Am. Br. 6, 16, 17) and that—with specific reference to the instant case then-pending in the Iowa Supreme Court—any other interpretation of

the Act would be erroneous as a matter of *federal* law (*id.* at 17 n.12).

In his amicus brief in this case, the Solicitor General has raised a question about the meaning of Florida's concession and consequently about the substance of the federal government's legal position in the *Florida* case, which he contends we "misapprehended" (U.S. *Iowa* Am. Br. 1). As he now expresses his view, the Solicitor General believes that the OCSLA (and the Florida concession) simply precludes a state from taxing OCS income as though it were earned within the state's borders, but does not prohibit the inclusion of OCS income in the apportionable income base used in determining the tax due the state (U.S. *Iowa* Am. Br. 4, 5-6). Whatever else may be said about it, this interpretation—that the OCSLA does not apply to apportioned state taxes—cannot fairly be understood to be what the federal government presented to the Court in its *Florida* amicus brief.[2]

First, as the Florida Supreme Court's opinion indicates, Florida's concession was broad and unqualified. Nothing in the restriction that the State acknowledged on its "taxing power" (Shell *Florida* J.S. App. 1-8) excluded apportioned taxation.

Quite the contrary, the context in which Florida made its concession specifically involved apportionment. The tax that Florida seeks to impose—and that Shell opposes—is an apportioned income tax, not a tax that deems the OCS to be within the State's boundaries. Unlike the Solicitor General, Iowa has correctly understood that Florida's concession related to its exclusion of net "OCS wellhead sales to third parties *from the unitary net income base*" (Iowa Mot. to Dis. 13 (emphasis added); see also *id.* at 16 n.15).

---

[2] For the reasons outlined above and in our jurisdictional statement, the government's position gives a crabbed and meaningless interpretation to the OCSLA that fails to further the Act's policies.

Moreover, in light of the language and history of the OCSLA, there could be no reasonable doubt that the Act forbids Florida from extending its geographical jurisdiction to the OCS. If that is all that Florida and the Solicitor General intended to foreclose, it is much ado about nothing—an interpretation that is belied by the evident importance that both the State and the federal government have attached to their submissions.

Finally, and perhaps most revealingly, the Solicitor General's *Florida* amicus brief expressly observed (at 17 n.6) that the Iowa Supreme Court would be in "error" in this case if it allowed the taxation that Florida had conceded would be improper under the OCSLA. Surely Iowa could not claim—with a straight face—that it had geographical jurisdiction over the OCS a thousand miles away. There was simply no basis for the Solicitor General to have believed that Iowa sought to extend its geographical jurisdiction to the Atlantic Ocean and the Gulf of Mexico in order "to tax income from sales completed on the OCS itself" (U.S. *Iowa* Am. Br. 5 n.1 (emphasis omitted)).

Thus, it is disingenuous for the federal government to assert that it has not altered its views on the meaning of the OCSLA and the application of the Act to state apportionment of income from on-Shelf sales. That the government has found it necessary to change its position underscores the difficult and substantial nature of the question presented here and reinforces the need for this Court to grant plenary review.

CONCLUSION

For the foregoing reasons and those stated in our jurisdictional statement, probable jurisdiction should be noted in this case, and Shell's appeal in the *Florida* case (No. 86-1593) should be held pending decision in this case.

Respectfully submitted.

JAMES W. HALL
Hall & Irvine
417 First Avenue S.E.
P.O. Box 2819
Cedar Rapids, Iowa 52406
(319) 366-8016

WILLIAM D. PELTZ
Shell Oil Company
900 Louisiana Street
P.O. Box 2463
Houston, Texas 77252
(713) 241-2414

KENNETH S. GELLER
Counsel of Record
MARK I. LEVY
Mayer, Brown & Platt
2000 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 463-2000
Counsel for Appellant

JANUARY 1988